

**REMARKS**

This responds to the Office Action mailed on July 1, 2005.

No claims are amended, canceled, or added by way of this amendment. As a result, claims 1-6 and 34-40 remain pending in this application.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

**Rejection of Claims 1-6 and 34-40**  
**under 35 U.S.C. §103(a) as Unpatentable**  
**over Parsiokas in view of Yee**

Claims 1-6 and 34-40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Parsiokas (U.S. 2003/0060219) in view of Yee et al. (U.S. 6,085,090).

Applicant does not admit that Parsiokas is prior art and reserves the right to swear behind Parsiokas as provided for under 37 C.F.R. §1.131.

Parsiokas appears to disclose an apparatus and method for transmitting audio signals from an auxiliary source such as a satellite broadcast receiver, CD, or cassette player to a radio receiver located, for example, in a vehicle, using a wireless link (see Abstract). It is noted, regarding independent claims 1 and 37, that no disclosure could be found in Parsiokas concerning a channel locator controller that includes a stored program digital computer to store a database of optimum (claim 1) or available (claim 37) carrier frequencies arranged by geoposition. Nor does Parsiokas, as the Examiner concedes, disclose a geoposition source coupled to the stored program digital computer to provide a geoposition to the stored program digital computer. In addition, regarding independent claim 34, no disclosure could be found in Parsiokas regarding an out-of-band transmitter to transmit a channel selection signal comprising an available carrier frequency, because unit 50 (FIG. 3) referred to by the Examiner is a satellite receiver (see Para. 0024) and not an out-of-band transmitter.

Yee appears to disclose a communications device comprising a geolocation device (see Abstract). It will be noted that, contrary to the Examiner's assertion, no disclosure could be found in Yee about a stored program digital computer to store a database of optimum (claim 1)

or available (claim 37) carrier frequencies arranged by geoposition. Specifically, no mention whatsoever could be found in Yee about the storage of optimum or available carrier frequencies. The citations within Yee that were mentioned by the Examiner, e.g. col. 3, lines 13-24, refer to a GPS unit translating ephemeris (orbital position) data from several satellites into a geoposition, and they do not describe storing a database of optimum (claim 1) or available (claim 37) carrier frequencies arranged by geoposition (emphasis added).

Further regarding Yee, the Examiner stated that low power system controller 106 (FIG. 106) stores a database of positional locations arranged by geoposition. However, this is not what independent claims 1 and 37 recite. Independent claims 1 and 37 both recite a stored program digital computer to store a database of optimum (claim 1) or available (claim 37) carrier frequencies arranged by geoposition (emphasis added).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

The asserted combination of Parsiokas in view of Yee fails to teach or suggest all of the claim limitations present in independent claims 1, 34, and 37, so a *prima facie* case of obviousness has not been established.

The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time the inventive subject matter was made to modify the sound generation device of Parsiokas to include a geoposition source as taught by Yee to provide quality sound reproduction by identifying and using available, non-interfering transmission channels or frequencies on a frequency band. The Examiner further stated that one or more available transmit frequencies can be accessed via the stored program digital computer based on the geoposition. However, Applicant vigorously rebuts this. The Examiner has not identified any teaching or suggestion in either Parsiokas or Yee about accessing one or more optimum (claim 1) or available (claim 37) carrier or transmit frequencies based on a geoposition. It is respectfully asserted that the Examiner's above-mentioned statement is based solely upon the hindsight gained from reading Applicant's own application.

For the above reasons, independent claims 1, 34, and 37 should be found to be allowable over Parsiokas in view of Yee, and Applicant respectfully requests that the rejection of claims 1, 34, and 37 under 35 U.S.C. §103(a) as unpatentable over Parsiokas in view of Yee be withdrawn.

Claims 2-6, which depend from claim 1 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claims 35-36, which depend from claim 34 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claims 38-40, which depend from claim 37 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

#### **Additional Elements and Limitations**

Applicant considers additional elements and limitations of claims 1-6 and 34-40 to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

**Conclusion**

Applicant respectfully submits that claims 1-6 and 34-40 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Walter W. Nielsen (located in Phoenix, Arizona) at (602) 298-8920, or the below-signed attorney (located in Minneapolis, Minnesota) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By his Representatives,

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Date Jan. 3, 2005

By Ann M. McCrackin  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3rd day of January 2006.

Amy Moriarty \_\_\_\_\_

Name

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Signature